

**STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL**

THE CONNECTICUT LIGHT AND POWER	:	DOCKET NO. 272
COMPANY AND THE UNITED	:	
ILLUMINATING COMPANY APPLICATION	:	
FOR A CERTIFICATE OF ENVIRONMENTAL	:	
COMPATIBILITY AND PUBLIC NEED FOR	:	
THE CONSTRUCTION OF A NEW 345-KV	:	
ELECTRIC TRANSMISSION LINE AND	:	
ASSOCIATED FACILITES BETWEEN THE	:	
SCOVILLE ROCK SWITCHING STATION IN	:	
MIDDLETOWN AND THE NORWAL	:	
SUBSTATION IN NORWALK, INCLUDING	:	
THE RECONSTRUCTION OF PORTIONS	:	
OF EXISTING 115-KV AND 345 KV ELECTRIC	:	
TRANSMISSION LINES, THE CONSTRUCTION:	:	
OF BESECK SWITCHING STATION IN	:	
WALLINFORD, EAST DEVON SUBSTATION	:	
IN MILFORD, AND SINGER SUBSTATION IN	:	
BRIDGEPORT, MODIFICATIONS AT	:	
SCOVILL ROCK SWITCHING STATION AND	:	
NORWALK SUBSTATION, AND THE	:	
RECONFIGURATION OF CERTAIN	:	
INTERCONNECTIONS	:	MAY 24, 2004

**MOTION OF RICHARD BLUMENTHAL, ATTORNEY GENERAL FOR THE
STATE OF CONNECTICUT, TO CONFORM THIS PROCEEDING TO THE
REQUIREMENTS OF SUBSTITUTE HOUSE BILL NO. 5418**

Richard Blumenthal, Attorney General for the State of Connecticut, hereby respectfully requests that the Connecticut Siting Council (“Council”) take certain affirmative steps that are necessary in order for the proceedings in the above-captioned case to meet the requirements of Substitute House Bill 5418, An Act Concerning Electric Transmission Siting Criteria, which was passed by the House of Representatives on May 3, 2004 and was passed by the Senate on May 5, 2004 (“H.B. 5418”), once it is adopted into law.

I. INTRODUCTION

The adoption of H.B. 5418 into law will change the landscape of the present proceeding in a number of significant ways. First, H.B. 5418 will provide specific guidance on the question of whether the proposed transmission line should be placed underground. The legislature has specifically stated in H.B. 5418 that there is a presumption that electric transmission lines that are 345 kV or greater shall be placed underground near residential areas, schools, licensed day care facilities, licensed youth camps or public playgrounds. This presumption can only be rebutted if the applicant can demonstrate to the Council that it would be technologically infeasible to bury the power lines, considering the reliability of the electric transmission system of the state.

Second, the legislature has specifically stated in H.B. 5418 that the EMF impact of this line on sensitive human population areas must be analyzed and taken into consideration by the Council in its siting decision. When adopted into law, H.B. 5418 will impose three new requirements on the Council when it considers applications to build electric transmission lines in Connecticut. First, H.B. 5418 will require that the Council fully understand the impact that the electromagnetic fields (“EMF”) emitted by the proposed transmission line will have upon nearby homes and other specific locations where children congregate, such as schools, day care facilities and camps. Second, H.B. 5418 will require that the Council take affirmative steps to protect, or “buffer,” those locations from the health and safety impacts of the new transmission lines. Third, H.B. 5418 will require that the Council keep current on all scientific and medical research concerning EMF.

By passing H.B. 5418, the legislature has made clear that the Council must regard EMFs as a potential health risk and must take affirmative steps to protect the health and safety of the neighboring residential areas as well as schools, parks, day cares and other certain land uses.

Third, H.B. 5418, when adopted into law, will impose new standards and criteria that the Council must apply when considering the application filed by the Connecticut Light and Power Company and the United Illuminating Company (jointly the “Applicants”) in this matter. Because these standards and criteria will be new, the record in this case is not sufficient to comply fully with the Act. As a result, in the interest of expediting these proceedings, the Attorney General hereby respectfully requests that the Council take a number of specific steps to conform the present proceedings to the requirements of H.B. 5418 upon its final adoption into law. These steps are:

1. Requiring the Applicants to provide additional or amended maps of their proposed route.
2. Requiring the Applicants to provide additional information concerning EMF at specific sites along the proposed route and alternate routes under consideration.
3. Requiring the Applicants to provide maps of the alternate routes under consideration.
4. Allowing participants a full and fair opportunity to address the issue of buffer zones for all routes under consideration.

II. DISCUSSION

Once adopted, H.B. 5418 will amend various provisions of Conn. Gen. Stat. §§ 15-50l, 16-50p, 15-50o and 16-50t. These amendments include modifications of existing language as well as the addition of entirely new legal standards and requirements that will become effective upon passage of the Act. As a result, the newly adopted statutory

language will apply to the application in the present case. Furthermore, the new statutory provisions must be incorporated into the Council’s present proceeding as it is unfolding. Following a brief review of the amendments required by H.B. 5418 is a discussion of the deficiencies in the record that will result from the passage of the bill.

A. The New Statutory Requirements

1. Section 16-50l

Once adopted, H.B. 5418 will amend section 16-50l(a)(1)(C) to require that applications for a certificate for environmental compatibility and public need contain:

a map of suitable scale of the proposed routing or site, showing details of the rights-of-way or site in the vicinity of settled areas, parks, recreational areas and scenic areas, residential areas, private or public schools, licensed child day care facilities, licensed youth camps, and public playgrounds and showing existing transmission lines within one mile of the proposed route or site.

(Emphasis denotes the newly added language).

H.B. 5418 will also add a new subsection to 16-50l(a)(1), identified as subsection (I). This new subsection provides that the applicant must provide “an assessment of the impact of any electromagnetic fields to be produced by the proposed transmission line.”

2. Section 16-50p

Section 16-50p(a) provides, in part, that the Council shall not grant a certificate unless it “shall find and determine” that there is a public need and the basis of the need for the proposed facility, the nature of the environmental impact of the proposed facility and why the adverse environmental effects are not sufficient to deny the application, including why other alternatives are not feasible and prudent with less adverse effects. The adoption of H.B. 5418 will amend subsection 16-50p(a)(2) to specify that when evaluating the environmental impact of the proposed facility, the Council must consider

EMF. Similarly, H.B. 5418 will amend section 16-50p(a)(3) to require that the Siting Council, in its written opinion, find and determine the impact of EMF when considering environmental impact and whether it adverse environmental impacts are sufficient to deny the application.

H.B. 5418 will also amend section 16-50p(a)(4) to state that in the case of overhead electric transmission lines, such as the one proposed by the Applicants in the present case, the Council must also find that the overhead portions, if any, are consistent with the Council's best management practices for EMF.

Further, H.B. 5418, once passed into law, will amend section 16-50p to require what are now known as "buffer zones." Specifically, the new statutory language provides that any overhead portions of the transmission line:

are to be contained within an area that provides a buffer zone that protects the public health and safety, as determined by the council. In establishing such buffer zone, the council shall take into consideration, among other things, residential areas, private or public schools, licensed child day care facilities, licensed youth camps or public playgrounds adjacent to the proposed route of the overhead portions and the level of the voltage of the overhead portions and any existing overhead transmission lines on the proposed route. At a minimum, the existing right-of-way shall serve as the buffer zone.

Section 16-50p also requires the CSC to file a decision stating its full reasons for the decision. H.B. 5418 will amend subsection 16-50p(a)(3)(D) to state that in the case of electric transmission lines, the Council must find and determine that any overhead portions of the line comply with those same buffer zone requirements.

H.B. 5418 will further amend section 16-50p by creating a new presumption regarding overhead electric transmission lines. New subsection (h) provides that:

[f]or a facility described in subdivision (1) of subsection (a) of section 16-50i, as amended, with a capacity of three hundred forty-five kilovolts or greater, there shall be a presumption that a proposal to place the overhead portions, if any, of

such facility adjacent to residential areas, private or public schools, licensed child day care facilities, licensed youth camps or public playgrounds is inconsistent with the purposes of this chapter. An applicant may rebut this presumption by demonstrating to the council that it will be technologically infeasible to bury the facility. In determining such infeasibility, the council shall consider the effect of burying the facility on the reliability of the electric transmission system of the state.

(Emphasis added).

3. Sections 15-50o and 16-50t

H.B. 5418, once adopted into law, will amend section 16-50o to require that the Siting Council take administrative notice of completed and ongoing scientific and medical research on EMF. In addition, H.B. 5418 will amend section 16-50t to require that:

[t]he council shall adopt, and revise as the council deems necessary, standards for best management practices for electric and magnetic fields for electric transmission lines. Such standards shall be based on the latest completed and ongoing scientific and medical research on electromagnetic fields and shall require individual, project-specific assessments of electromagnetic fields, taking into consideration design techniques including, but not limited to, compact spacing, optimum phasing of conductors, and applicable and appropriate new field management technologies. Such standards shall not be regulations for purposes of chapter 54.¹

H.B. 5418 will also amend section 16-50t of the Act to provide that if the Act results in the reconfiguration or burial of a transmission line, “all prudent costs incurred by an electric distribution company, as defined in section 16-1 of the general statutes, as amended, associated with the reconfiguration or burial shall be deemed to be reasonable pursuant to sections 16-19 and 16-19e of the general statutes and shall be recovered by the electric distribution company in its rates.”

¹ H.B. 5418 also requires that the Council, not later than January 1, 2005, submit a report to the joint standing committee of the General Assembly having cognizance of matters relating to energy and the environment, which report shall contain the Council’s most recent version of its standards for best management practices for EMF for electric transmission lines and a description of the methodology used in selecting such standards.

B. The Record in This Proceeding is Inadequate to Comply with the New Requirements Imposed by H.B. 5418

The present record in this case is inadequate to allow the Siting Council to satisfy the requirements that are to be imposed by H.B. 5418. As a result, in the interest of expediting these proceedings, the Attorney General respectfully moves that the Council take the affirmative steps described herein to comply with the new requirements upon the passage of H.B. 5418 into law.

1. The Council Must Require the Applicants to Provide Additional Maps of Their Proposed Route

Section 16-50l(a)(1)(C), once amended by H.B. 5418, will require that applications for a certificate for environmental compatibility and public need contain a map of suitable scale of the proposed routing showing details of the rights-of-way or site in the vicinity of settled areas, parks, recreational areas and scenic areas, as well as of residential areas, private or public schools, licensed child day care facilities, licensed youth camps, and public playgrounds. In the present case, while the Applicants have provided maps of their proposed route, these maps do not identify licensed child day care facilities and licensed youth camps and may not sufficiently identify residential areas and public playgrounds. Upon the final adoption of H.B. 5418 into law, the Siting Council should require the Applicants to provide such information in this case.

2. The Council Must Require the Applicants to Provide Additional Information Concerning EMF at Specific Sites Along the Proposed Route and Alternate Routes Under Consideration in this Proceeding

New subsection (I) to 16-50l(a)(1), once amended by H.B. 5418, will state that the applicant must provide “an assessment of the impact of any electromagnetic fields to be produced by the proposed transmission line.” It is very important to note that while

the amendment to section 16-501(a)(1)(C) appears to apply to the applicants' proposed route, the language of the new subsection (I), once H.B. 5418 is adopted into law, will not be limited to the proposed route. Consequently, new subsection (I) will impose two additional requirements upon the Applicants. First, it will require that the Applicants provide an assessment of any EMF produced by the proposed transmission line along the proposed route. Since the Applicants have yet to identify and map licensed child day care facilities, licensed youth camps and may not have sufficiently identified and mapped residential areas and public playgrounds, they clearly have not yet fully satisfied subsection (I) in that they have not adequately assessed the impact of EMF on such heretofore unidentified locations.

Second, as noted above, new subsection (I) is not limited to the Applicants' proposed route. As a result, in order to comply with the requirements of subsection (I), the Council will have to assess the impact of any EMF produced by the proposed transmission line wherever it is sited. In other words, new subsection (I) will require that the applicants provide an assessment of EMF impacts that would be produced by the newly added transmission line regardless of whether it is actually sited along the proposed route or elsewhere by the Council.

In the present case, the Council is considering a number of alternate routes in addition to the Applicants' proposed route. These alternate routes include a so-called "East Shore" alternative, a Route 15 alternative and others, including alternatives that may yet be proposed by the various town participants. In order to comply with the clear requirements of new subsection (I) once it is adopted into law, the Council will have to require that the Applicants provide an assessment of the impact of any EMF to be

produced by the transmission line along all of the alternate routes that are under consideration. Such assessments have yet to be done in the present case. Such assessments will also aid the Council in comparing the relative impact of the proposed route with that of the various alternate routes.

The amended provisions in section 16-50p will also require the Council to direct the Applicants to provide additional information concerning EMFs along the various routes under consideration in this case. First, when considering the environmental impact of a proposed facility, in order to determine whether that impact is sufficient to outweigh the public need for the facility, the Council will have to consider EMF. See 16-50p(a)(2) and 16-50p(a)(3), once amended by H.B. 5418. Second, pursuant to section 16-50p(a)(4) when amended, the Council will also have to find that the overhead portions of any route that is finally approved by the Council are consistent with the Council's best management practices for EMF. Third, the buffer zone requirements of section 16-50p, when adopted, also indicate that the Council must know more about EMF along the various alternate routes. Since the Council is considering a number of alternate routes in this case, in addition to the Applicants' proposed route, the Council will have to receive additional information as to EMFs along the various proposed routes.

3. Buffer Zone Requirements

The buffer zone language in section 16-50p, once into law, will provide that any overhead portions of the proposed electric transmission line must be contained in an area that "provides a buffer zone that protects the public health and safety, as determined by the council." In establishing such buffer zones, the Council will have to consider, among other things, "residential areas, private or public schools, licensed child day care

facilities, licensed youth camps or public playgrounds adjacent to the proposed route of the overhead portions and the level of the voltage of the overhead portions and any existing overhead transmission lines on the proposed route.” Section 16-50p, when amended by H.B. 5418, will further state that “at a minimum, the existing right-of-way shall serve as the buffer zone.”

a. The Council Should Require the Applicants to Provide Maps of the Alternate Routes Under Consideration

The buffer zone requirement will not be limited to the route proposed by the Applicants. Rather, once H.B. 5418 is adopted into law the Council will have to establish a buffer zone surrounding the transmission line that is actually sited, be it along the proposed route or along any of the alternate routes under consideration. Consequently, when H.B. 5418 is finally adopted the Council should require that the Applicants provide maps of the alternate routes under consideration in this proceeding to enable the Council and participants to evaluate potential buffer zones along those routes. Such maps should identify residential areas, schools, licensed child day care facilities, licensed youth camps or public playgrounds along the alternate routes.

b. The Council Should Allow All Participants in this Proceeding a Full and Fair Opportunity to Address the Issue of Buffer Zones

The legislature passed H.B. 5418 to establish specific standards that will protect the health and safety of the public when overhead electric transmission lines are being sited. Because EMFs are a major focus of the legislation, a primary purpose of the buffer zone requirement is to provide reasonable and adequate protection to residential areas and other certain specified facilities that are frequently used by children from the EMFs emitted by overhead electric transmission lines.

The language of H.B. 5418 does not, however, provide specific requirements for buffer zones in specific circumstances. Rather, the legislature left it to the Council to determine the buffer zone that is necessary to protect the public health and safety in each affected area. There are, however, limits on the discretion the Council can exercise. For example, the language in H.B. 5418 concerning buffer zones states that “[a]t a minimum, the existing right-of-way shall serve as the buffer zone.” Certainly it does not appear appropriate or consistent with the intent of H.B. 5418 for the Council to establish an existing right-of-way as a buffer zone if there are houses or schools located within that very right-of-way.

Thus, at the very least, the Council should allow all participants the opportunity to present evidence concerning buffer zones for each of the various alternate routes under consideration in this proceeding. Such hearings, however, could only occur after the Applicants have provided information the information sought in this motion; the location and EMF levels at the residential areas, schools, day care facilities, youth camps and playgrounds along each of the routes under consideration in this case.

WHEREFORE, for the foregoing reasons and in the interest of expediting these proceedings, the Attorney General hereby respectfully requests that the Council take the steps discussed herein to conform these proceedings to the requirements of H.B. 5418 once it is finally adopted into law.

Respectfully Submitted,

RICHARD BLUMENTHAL
ATTORNEY GENERAL
55 Elm Street
P.O. Box 120
Hartford, CT 06141-0120

Michael C. Wertheimer
Assistant Attorney General
Attorney General's Office
10 Franklin Square
New Britain, CT 06051
Tel: 860-827-2620
Fax: 860-827-2893

Service is hereby
certified to all parties and
intervenors identified on this
Agency's service list.

Michael C. Wertheimer
Assistant Attorney General
Attorney General's Office
10 Franklin Square
New Britain, CT 06051
Tel: 860-827-2620
Fax: 860-827-2893